

AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1192

Introduced by Assembly Member Dutra

February 21, 2003

An act to amend Section 65863 of the Government Code, relating to land use, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1192, as amended, Dutra. Land use.

Existing law prohibits a city, county, or city and county from reducing, requiring, or permitting the reduction of the residential density for any parcel below the density that was utilized by the Department of Housing and Community Development in determining compliance with housing element law unless the city, county, or city and county makes written findings supported by substantial evidence that the reduction is consistent with the adopted general plan, including the housing element and the remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need. The city or county may reduce the residential density for a parcel if it identifies sufficient additional sites, as prescribed.

This bill would ~~allow the city or county to reduce the residential density for a parcel if, within 30 days, it initiates action designed to achieve sufficient additional, adequate, and available sites. The bill would~~ prohibit the imposition of any requirement on the property owner, the owner's agent, or a project applicant with respect to property

that is subject to a reduction in residential density in connection with meeting that requirement for additional sites, *except as specified*.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65863 of the Government Code is
2 amended to read:

3 65863. (a) Each city, county, or city and county shall ensure
4 that its inventory or programs of adequate sites pursuant to
5 paragraph (3) of subdivision (a) of Section 65583 and paragraph
6 (1) of subdivision (c) of Section 65583 can accommodate its share
7 of the regional housing need pursuant to Section 65584,
8 throughout the planning period.

9 (b) No city, county, or city and county shall, by administrative,
10 quasi-judicial, or legislative action, reduce, require, or permit the
11 reduction of the residential density for any parcel to a lower
12 residential density that is below the density that was utilized by the
13 Department of Housing and Community Development in
14 determining compliance with housing element law, Article 10.6
15 (commencing with Section 65580) of Chapter 3, unless the city,
16 county, or city and county makes written findings supported by
17 substantial evidence of both of the following:

18 (1) The reduction is consistent with the adopted general plan,
19 including the housing element.

20 (2) The remaining sites identified in the housing element are
21 adequate to accommodate the jurisdiction's share of the regional
22 housing need pursuant to Section 65584.

23 (c) (1) If a reduction in residential density for any parcel would
24 result in the remaining sites in the housing element not being
25 adequate to accommodate the jurisdiction's share of the regional
26 housing need pursuant to Section 65584, the jurisdiction may
27 reduce the density on that parcel ~~only if it identifies or, within 30~~
28 ~~days after the date of the action approving the reduction in density~~
29 ~~initiates action designed to achieve, sufficient if it identifies~~
30 *sufficient* additional, adequate, and available sites with an equal or

1 greater residential density in the jurisdiction so that there is no net
2 loss of residential unit capacity.

3 (2) The requirement in paragraph (1) to identify ~~or initiate~~
4 ~~action designed to achieve~~ sufficient additional, adequate, and
5 available sites with an equal or greater residential density in the
6 jurisdiction shall not result in the imposition, directly or indirectly,
7 of any requirement upon the property owner, its agent, or a project
8 applicant with respect to the property that is subject to a reduction
9 in residential density. Nor shall the property owner, its agent, or
10 project applicant whose property is subject to a reduction in
11 residential density be required to participate in or fund, directly or
12 indirectly, the activity designed to achieve no net loss of residential
13 unit capacity, including, but not limited to, the process leading to,
14 and the granting of, any land use entitlement or permit and any
15 mitigation measures or conditions of approval connected with the
16 activity.

17 (d) The requirements of this section shall be in addition to any
18 other law that may restrict or limit the reduction of residential
19 density.

20 (e) If a court finds that an action of a city, county, or city and
21 county is in violation of this section, the court shall award to the
22 plaintiff or petitioner who proposed the housing development,
23 reasonable attorney's fees and costs of suit, except under
24 extraordinary circumstances in which the court finds that
25 awarding fees would not further the purposes of this section or the
26 court finds that the action was frivolous. This subdivision shall
27 remain operative only until January 1, 2007, and as of that date is
28 no longer operative, unless a later enacted statute that is enacted
29 before January 1, 2007, deletes or extends that date.

30 (f) *This section is intended to require that a city, county, or city
31 and county be solely responsible for compliance with this section.*

32 (g) *This section shall not be construed to require changes in any
33 zoning designations for a specific parcel or general plan
34 residential density designations.*

35 (h) *This section shall not be construed to change a local
36 jurisdiction's zoning or parcel plan description for particular
37 parcels nor impose a new minimum residential density standard on
38 any parcel.*

39 (i) *This section shall not be construed to apply to parcels that,
40 prior to January 1, 2003, were either (1) subject to a development*

1 *agreement, or (2) parcels for which an application for a*
2 *subdivision map had been submitted.*

3 SEC. 2. This act is an urgency statute necessary for the
4 immediate preservation of the public peace, health, or safety
5 within the meaning of Article IV of the Constitution and shall go
6 into immediate effect. The facts constituting the necessity are:

7 In order to provide housing for California residents and to
8 clarify that local governments should not unnecessarily condition
9 development projects, it is necessary that this act take effect
10 immediately.

